Goo Hee Sing v Will Raja & Anor

HIGH COURT (SHAH ALAM) — SAMAN PEMULA NO 24-746-1992
MAHADEV SHANKAR J
1 SEPTEMBER 1993

Land Law *— Sale of land — Caveat — Application to extend caveat — Land subject to restriction in that it cannot be sold, pledged, charged or transferred in any manner without permission of state authority — Whether caveat filed by the plaintiff was a nullity — Whether plaintiff had caveatable interest in land before consent of state authority was obtained*

The first defendant entered into a purported deed of sale of a piece of land ('the said land') to the plaintiff. The said land has a restriction in interest in that it cannot be sold, pledged, charged or transferred in any manner without the permission of the state authority. There was no reference whatseover to the said restriction in the deed of sale. The plaintiff however, lodged a caveat ('the said caveat') against the said land in reliance of this deed of sale. The land was not transferred and there was no evidence that the required consent from the state executive council was ever applied for, let alone obtained. The plaintiff has brought an action against the first defendant and this is an application for an extension of the said caveat pending the conclusion of the suit. The only issue which the court had to decide on was whether in the face of the restriction in interest, the caveat filed by the plaintiff was a nullity.

Held, dismissing the plaintiff's application:
In order to file a caveat, the caveator must have a caveatable interest. The claim must be to title or a right thereto in praesenti, and not to some contingent title or right thereto in futuro. This raised a question of paramount importance to the administration of land law in Malaysia, whenever the title contains a restriction in interest of the present kind. Because the prohibition in dealing with the land was total, nothing could happen without the consent of the state authority. Consequently, it must follow that a prospective purchaser, chargee, or lessee of such land can have no caveatable interest in such land until the consent of the state authority has first been irrevocably obtained.

[Bahasa Malaysia summary

Defendan pertama telah mengikat suatu suratikatan jualan sebidang tanah ('tanah itu') kepada plaintif. Terdapat suatu sekatan atas tanah itu yang menyebabkannya tidak boleh dijual, digunakan sebagai cagaran, digadai atau dipindahmilik dengan sebarang cara tanpa kebenaran pihak berkuasa negeri. Tidak terdapat sebarang rujukan kepada sekatan itu di dalam suratikatan jualan itu. Akan tetapi, plaintif telah membuat suatu kaveat ('kaveat itu') terhadap tanah itu bergantung terhadap suratikatan jualan itu. Tanah itu tidak

A dipindahmilik dan tidak terdapat bukti yang menunjukkan bahawa kebenaran yang diperlukan daripada pihak berkuasa negeri pernah dipohon, lebih-lebih lagi didapati. Plaintif telah memulakan suatu tindakan terhadap defendan pertama dan ini merupakan suatu permohonan untuk melanjutkan kaveat itu sementara menunggu B penyelesaian guaman itu. Satu-satunya isu yang perlu diputuskan oleh mahkamah adalah sama ada memandangkan sekatan atas kepentingan itu, kaveat yang telah difailkan oleh plaintif adalah tidak sah.

Diputuskan, menolak permohonan plaintif itu:
Untuk memfailkan suatu kaveat, pengkaveat mestilah mempunyai C suatu kepentingan yang boleh dikaveat. Tuntutan itu mestilah terhadap hakmilik atau kepentingan yang hadir dan bukan suatu hakmilik atau kepentingan kontingen masa hadapan. Ini menimbulkan suatu soalan yang amat penting di dalam pentadbiran undang-undang tanah di Malaysia, apabila hakmilik itu mengandungi sekatan atas kepentingan D seperti di dalam kes ini. Oleh kerana sekatan dalam urusan tanah itu adalah sekatan penuh, tidak ada apa-apa yang boleh berlaku tanpa kebenaran pihak berkuasa negeri. Oleh itu, seseorang bakal pembeli, pemegang gadaian, atau penerima pajak tanah yang sedemikian tidak akan mempunyai sebarang kepentingan yang boleh dikaveat dalam tanah itu sehingga kebenaran pihak berkuasa negeri yang tidak boleh E batal didapati terlebih dahulu.]

Notes
For cases on caveats, see 8 *Mallal's Digest* (4th Ed) paras 1837–1845.

F **Cases referred to**
1 *Tan Heng Poh v Tan Boon Thong & Ors* [1992] 2 MLJ 1 (refd)
2 *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189 (refd)
3 *Khoo Cheng Yee v Khoo Teng Seong & Ors* [1992] 4 CLJ 2140 (refd)

G *MS Ong* (*KC Yap Kamaludin & Partners*) for the plaintiff.
Ashfar Ali (*Ashfar Ali and Associates*) for the first defendant.
Salehuddin bin Saidin (State Legal Advisor) for the second defendant.

Cur Adv Vult

H **Mahadev Shankar J**: On the face of it this is an application for an extension of a caveat pending the conclusion of a suit in this court. But a question of paramount importance it raises is whether a caveatable interest is acquired by a purported purchaser of land which has a restriction in interest that it cannot be sold, pledged, charged or transferred in any I manner without the permission of the state authority.

The land comprised in HS(M)1592 No PT Batu 2 in the mukim of Sepang ('the said land') was alienated to the first defendant on 26 October 1987. The special condition read as follows:

Sekatan-sekatan kepentingan

Tanah ini tidak boleh dijual, dipajak, digadai atau dipindahmilik dengan apa cara sekalipun tanpa kebenaran Pihak Berkuasa Negeri.

In the face of this restriction, the first defendant entered into a purported deed of sale of the said land to the plaintiff on 29 September 1988, for a sum of RM32,000. There is no reference whatseover to the said restriction in the deed of sale. Nor has it been explained why the figure of RM32,000 has in places been deleted and substituted with a sum of RM25,000. The plaintiff holds himself out in this court as an illiterate person who only understands Hokkien and claims not to have understood what he was signing. Nevertheless, he was wise enough to lodge a caveat ('the said caveat') the same day against the said land in reliance of this deed of sale. Since he would have had to swear a statutory declaration in support of the caveat, his alleged ignorance of the contents of the deed of sale must be taken with more than just a pinch of salt.

One week later on 5 October 1988, the parties executed another document whereby the first defendant gave the first plaintiff a cheque for RM40,000 by way of security for the transfer of the said land which the plaintiff is said to have bought for RM32,000. This cheque was to be forfeited by the plaintiff if the said land was not transfered to the plaintiff. The plaintiff has signed this document by way of confirmation that he had received the cheque. The document does not state when the said land was to be transferred to the plaintiff. Once again, the plaintiff claims he did not know what he was signing and also says did not receive the cheque.

The land was not transferred. There is no evidence that the required consent from the pihak berkuasa negeri (ie the state executive council) was ever applied for, let alone obtained.

Counsel for the first defendant informed the court that in early February 1990 the parties agreed that the RM40,000 aforesaid would be paid by instalments with six post-dated cheques. The first for RM10,000 was cashed personally by the plaintiff. The other five bounced. The plaintiff then filed Telok Datuk Magistrates' Court Summons No 52–8–91. Contentious affidavits were filed by both parties. On 23 September 1992, the parties appeared before the learned magistrate in open court. Both the plaintiff and the first defendant were represented by counsel. A consent order was then made whereby a default judgment obtained by the plaintiff against the first defendant was set aside and a further consent order was made whereby the first defendant was ordered to pay the plaintiff RM28,000 in full settlement of his claims within 14 days of the sealed order being served on him whereupon the plaintiff was obliged to have the said caveat cancelled within 14 days thereafter.

But the plaintiff refused to accept the RM28,000 when it was tendered to him. Instead he applied on 9 October 1992 to have the consent order set aside on the ground that, even though he was present in court when it was made, he was not properly briefed by his own counsel of the terms of the consent order and that therefore, it was not binding upon him.

That application was heard on 30 November 1992 and it was dismissed by the learned magistrate. Against that order of dismissal, the plaintiff's

A solicitors say there is a pending Appeal No 12–5–92 which has not yet been heard. No such appeal exists in the court records under this file number!

On 29 September 1992, this plaintiff filed a Civil Suit No 22–410–92 in this court through another firm of solicitors Messrs KL Yap Kamaluddin & Partners. The relief prayed for is for specific performance of the deed of sale
B aforesaid of the said land, and damages for non-performance and in the alternative for the sum of RM40,000 being the sum he claims is due to him on the second agreement dated 5 October 1988, which he claimed earlier that he did not understand when he executed it.

On or about 4 September 1989, the plaintiff had received a letter from the PTD Sepang to show cause why his caveat should not be removed. It
C will be recollected that the consent order was made on 23 September 1989. What the plaintiff chose to do thereafter was to file the present application in this court on 29 September 1992 for an order that his caveat be extended until the civil suit he had filed had been disposed of.

The chequered history of subsequent events relating to the applications
D and counter applications in this originating summons need not delay us except to state that by 21 July 1993, the only issue which this court had to decide was whether in the face of the restriction in interest, the caveat filed by the plaintiff was a nullity.

In order to file a caveat, the caveator must have a caveatable interest.
E What is a caveatable interest has been the subject of many decisions, some of the most recent cases being *Tan Heng Poh v Tan Boon Thong & Ors*,[1] *Hew Sook Ying v Hiw Tin Hee*,[2] and *Khoo Cheng Yee v Khoo Teng Seong & Ors*.[3]

To put it in a nutshell, on 29 September 1989, the plaintiff should have been able to claim title to the said land, or a right to such title by virtue of the deed of sale aforesaid. Alternatively, he should be a person who could
F validly claim a right to such title.

The point however is that the claim must be to title or a right thereto in praesenti, and not to some contingent title or right thereto in futuro.

This to my mind raises a question of paramount importance to the administration of land law in Malaysia, whenever the title contains a
G restriction in interest of the present kind. Because the prohibition in dealing with the land is total, nothing can happen without the consent of the pihak kuasa negeri.

Consequently, it must follow that a prospective purchaser, chargee, or lessee of such land can have no caveatable interest in such land until the
H consent of the pihak kuasa negeri has first been irrevocably obtained.

Notwithstanding the comment of Judith Sihombing in her learned treatise on the National Land Code at p 43 'that, even the most ephermeral of claims to interests can be caveated ...' I am impelled to this conclusion because the applicant has not been able to demonstrate that an application for approval had already been made and that the pihak kuasa negeri was
I bound to grant that approval as a matter of course within a reasonable period of time.

So until the grey areas surrounding the circumstances of the granting or witholding of consent to deal with land subject to such restrictions in

interest are clarified, I regret to state that there is therefore only one decision that is possible in this case. The application for the maintenance of this caveat must be dismissed.

I made no order as to costs here because this point has not been taken before. Besides, the plaintiff is out of pocket by the sum of money he paid for the said land, be it RM32,000 or RM25,000 as the case may be. The plaintiff's claim to ignorance of the documents he executed have not impressed me. On the last day of hearing, the first defendant produced RM28,000 cash which his solicitor undertook to hold for seven days, if the plaintiff wished to accept it in full settlement as provided in the consent order. That is a matter for the plaintiff to sort out with his legal advisers. The Civil Suit No 22–410–92 and the alleged appeal against the dismissal of the application to set aside the consent order will have to be dealt with on their own merits if and when the time comes.

Order accordingly.

Reported by Jeanne Tan